

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 584 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARMADABEN DAYALJIBHAI VADGAMA

Versus

MAHESHBHAI PRABHUDAS KALORANIYA

Appearance:

MR YATIN SONI for Petitioner

MR MUKESH R SHAH for Respondent No. 1

MR AG URAIZEE,APP with Mr.MR Anand,PP for Respondent No.2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/07/96

ORAL JUDGEMENT

The order impugned in this Special Criminal Application reads as under :

"The application is partly allowed.

The order of the learned Magistrate passed below

Ex.1 in Cri.Misc.Application No.452/96 dated 22.4.1996 is hereby stayed so far as it relates to the recovery of maintenance amount for the period exceeding 12 months preceding the date of the application. The learned Magistrate shall issue a fresh warrant for the recovery of the amount of Rs.6,000/-, the maintenance amount for the period of 12 months preceding the application of the opponent. An urgent notice be issued to the opponent and the opponent shall have the right to put forward her claim for setting aside the above order as this order has been passed purely for the temporary period during the pendency of the Revision Application.

Pronounced in open court, today on this 23rd day of April 1996."

2. The aforesaid order passed by learned Addl. Sessions Judge, Rajkot in Criminal Revision Application No.67/96 is on a plain reading thereof interlocutory in nature and passed ad.interim. The learned Judge has reserved the opportunity to the present petitioner of being heard on the question whether distress warrant should be stayed or not. Mr.Yatin Soni, learned Advocate for the petitioner has vehemently submitted that no stay ought to have been granted, even ad.interim, without directing the present respondent No.1 to deposit full amount of distress warrant, viz. Rs.25,500/-. No opinion needs be expressed on the submissions made by Mr.Soni for the same reason, namely, that the order impugned in this is interlocutory in nature and any observation made here might prejudice either the petitioner or the respondent No.1 at the bipartite hearing of Ex.4 in Criminal Revision Application No. 67/96. In that view of the matter this Special Criminal Application is not required to be entertained except to say that the respondent No.1 should deposit Rs.12,000/in the trial Court (in the Court of learned J.M.F.C.) within a period of four weeks from today. This will be a modification in the ad.interim direction of Rs.6,000/set out by the learned Additional Sessions Judge in the impugned order. Mr.Soni has referred to the decisions in the case of Maniben @ Madhuben Motigir Goswami V/s. Manibhai Mohangir Goswami, reported in XXIV(I) - 1983(1) G.L.R. 394 and in the case of Noorjahan Ahmadbhai V/s. Farooqbhai, reported in 1979 Cri.Law Report (Guj) 258. The same might be canvassed before the learned Additional Sessions Judge.

3. The amount of Rs.12,000/- directed to be

deposited as said above shall be without prejudice to the rights and contentions of the parties. The said amount is permitted to be withdrawn by the petitioner and such withdrawal shall also be without prejudice to the rights and contentions of the parties.

4. Subject to this, Rule is discharged. The learned Additional Sessions Judge is directed to hear the Application Ex.4 and if possible Criminal Revision Application No.67/96 as well as Criminal Revision Application No. 27/94 as expeditiously as possible, preferrably within a period of eight weeks from the date of receipt of writ of this direction.

Direct service permitted.

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